

## CITY OF SURPRISE PERSONNEL APPEALS BOARD

### RULES– Updated 10/15/2020

#### Sec 100. PURPOSE, SCOPE AND APPLICABILITY

101. Purpose. The purpose of these rules is to provide standards of practice and procedure for hearings conducted by the Personnel Appeals Board.

102. Scope. Pursuant to Surprise Municipal Code Section 3-41, the Personnel Appeals Board shall hear and decide appeals of classified employees arising out of disciplinary action consisting of suspension greater than 24 hours, demotion or termination; or, for peace officers, any suspension, demotion or termination in accordance with the Peace Officer's Bill of Rights at Arizona Revised Statutes § 38-1101 et seq, as amended. The Board shall hear no other matters.

103. Applicability. These rules shall apply to all matters within the Board's jurisdiction as described by Surprise Municipal Code Chapter 3, Article IV, Section 3-41 et seq.

104. Severability. The rules contained herein are severable and, to the extent that any provision or rule is held to be invalid, shall not affect any other provision or rule which may remain in effect without the invalid provision or rule.

105. Preemption of State Law and Surprise ordinances. These rules are intended to comply with applicable Arizona law and City of Surprise Ordinances including but not limited to A.R.S. § 38-1106, as amended. If a situation arises in which these rules conflict with Arizona law or Surprise ordinance, state law and/or city ordinance shall control.

#### Sec 200. DEFINITIONS

201. "Appeal" means the formal process authorized by Surprise Municipal Code Sec. 3-41 et. seq. and Employee Policy 10.4 whereby a party can appeal certain specified decisions of the City Manager/Appointed Official or designee to the Personal Appeals Board.

202. "Appellant" means the employee appealing a decision to the Board.

203. "Board" means the Personnel Appeals Board established by Surprise Municipal Code Sec. 3-41 et seq.

204. "Calendar day" means any day of the week, including Saturdays, Sundays and holidays.

205. "City" means the City of Surprise, Arizona, the party who made the decision under appeal.

206. "City Manager/Appointed Official" means the City Manager or other official appointed by City Council to whom the City Manager has delegated the authority to hear grievances of classified employees, or designee.

207. "Competent evidence" means documents or testimony illustrating what a witness knew, heard, or saw.

208. "Offer of proof" means a representation by a party, whether orally or in writing, as to the testimony a witness would give to the Board under oath with respect to the particular facts if the witness were to testify live.

209. "Preponderance of the evidence" means admissible evidence that demonstrates that a fact is more probable than not.

210. "Working day" means a day that City Hall is open to the public.

#### Sec. 300 BOARD PROCEDURES, GENERALLY

301. Board Staff and Support Services.

(a) The Human Resources Director, or designee, shall serve as the executive secretary to the Board.

(b) The executive secretary to the Board shall be responsible to:

(1) Schedule the hearing;

(2) Arrange for recording the hearing;

(3) Collect, consolidate and provide documentary evidence submitted by the parties to the Board.

(c) The role of the executive secretary in an adjudicatory proceeding shall be to render clerical, administrative or other support to the Board in connection with the proceeding.

(d) The Board shall be appointed independent legal counsel by the City.

302. Public Access to Records.

(a) The Board shall maintain its records in the Human Resources Department of the City of Surprise. Those records shall be open for inspection, in accordance with Title 39 of the Arizona Revised Statutes.

(b) Interested persons may submit requests for public records through the Office of the City Clerk.

(c) Interested persons may review and download copies of the Board procedure, from the City's website; [www.surpriseaz.gov](http://www.surpriseaz.gov).

303. Public Hearing.

(a) All hearings before the Board shall be held in accordance with the Arizona Open Meeting Law. Hearings are open to the public to the extent required by Title 38 of the Arizona Revised Statutes, as amended.

(b) Minutes shall be taken by the executive secretary of the Board, including during executive session. Minutes for the public sessions shall be posted on the internet within three working days of the meeting; whether or not such have been approved.

(c) Notice of the hearing shall be no less than 24 hours prior to the meeting and shall include a list of all matters to be discussed, considered or decided as required by the Arizona Open Meeting Law.

(d) The Board's final decision on an appeal shall be made in a public meeting.

304. Computation of Time.

(a) Unless otherwise specified, all time periods referenced in these rules shall be in working days.

(b) Computation of any period of time referenced in these rules shall begin with the day after the action which sets the time period in motion, and shall include the last day of the period so computed.

(c) If the last day of the period so computed falls on a Saturday, Sunday, or legal holiday, then the time period shall be extended to include the first business day following the Saturday, Sunday, or legal holiday.

305. Adherence to Rules. The Board shall take such action in regard to violations of these rules or its orders as it determines:

(a) Is not disproportionate to the magnitude of the act or omission at issue;

(b) Equitably addresses the particular violation; and

(c) Is not prohibited by law.

(d) The parties to the appeal may agree to modifications of these rules to facilitate good order and management of appeals including extensions of timelines contained in these rules and shall document any such agreement in writing to the Executive Secretary of the Board. Any such modifications may be subject to Board review and approval.

306. Presiding Officer.

(a) The Presiding Officer shall be the Board chair. If the chair is absent from the hearing, the Presiding Officer shall be the vice-chair. If neither the chair nor vice chair are available for the hearing, the quorum of the Board shall designate a member to serve as the Presiding Officer.

(b) The Presiding Officer shall, as necessary:

- (1) Regulate and control the course of the hearing;
- (2) Administer oaths and affirmations;
- (3) Receive relevant and competent evidence and exclude irrelevant, immaterial, unduly repetitious or otherwise inadmissible evidence;
- (4) Issue the Board's rulings on procedural matters;
- (5) Question anyone who testifies or presents argument and open the floor to other participating Board members, to question anyone who testifies or presents argument, to the extent required to make a full and fair record;
- (6) To the extent necessary, take official notice of facts that are common knowledge; and
- (7) Take any other action consistent with applicable law that is necessary to conduct the hearing, advance the proceeding, resolve matters or issues related to the proceeding and complete the record in a fair and timely manner.
- (8) The Presiding Officer shall conduct Board meetings in accordance with the parliamentary rules contained in Robert's Rules of Order unless otherwise specified in these rules or in conflict with Arizona law.

307. Withdrawal of Board Members for a Conflict of Interest.

(a) A Board member shall notify the Executive Secretary and provide written notification if a Board member has a Conflict of Interest as defined by A.R.S. § 38-503. The Board member shall not participate in any aspect of the matter in which there is a conflict.

(b) If a Board member believes that he or she cannot fairly or accurately judge the facts of the case, the Board member shall discuss the situation with the Executive Secretary and/or independent counsel for the Board. Mere knowledge of the issues involved in the matter, acquaintance with any party, witness or representative shall not constitute good cause for withdrawal.

#### Sec. 400 COMMUNICATION

401. Communication with the Board. Except at proceedings convened by the Board, no party or party's representative shall communicate with any member of the Board, either directly or indirectly, on any issue that is or will likely be before the Board.

402. Submission of Documents

(a) Any document required to be filed or submitted to any party or to the Board shall be submitted to such by filing/submitted the documents to the executive secretary for the Board.

(b) Submission of documents shall be accomplished either by personal delivery to the executive secretary of the Board or by any of the following methods addressed to the executive secretary of the Board:

- (1) First class mail, certified mail, registered mail, express mail or other form of specialized priority postal delivery sent to the last known address;
- (2) Messenger mail;
- (3) Facsimile or electronic submission; or
- (4) Secure email to the executive secretary of the Board.

(c) Upon receipt of any documents, the executive secretary of the Board shall forward copies of all such documents to the appropriate parties or Board by one of the methods specified in (b) (1) through (4).

(d) Documents submitted in paper to another party through the executive secretary shall include the original plus one additional paper copy.

(e) Documents submitted in paper to the Board through the executive secretary shall include the original plus nine additional paper copies.

(f) Filing/submission of documents shall not be deemed timely unless received by the executive secretary within the time fixed by these rules.

403. Notification of Changes in Name, Address, Telephone Number, Fax Number and E-mail Address. Parties and their representatives shall notify the Board through the executive secretary of any change in their name, address, telephone number, fax number and e-mail address.

#### Sec. 500 APPEAL, CONFERENCES AND MOTIONS - PROCEDURES

##### 501. Filing an Appeal.

(a) Appeals shall be filed in accordance with Employee Policy 10.4 either using the form published by the City or a comparable document which explains the matter being appealed, the specific grounds for the appeal including the reasons why the underlying discipline was inappropriate and the action desired by the appellant. The Board has no ability to hear additional matters outside the scope of the written appeal.

(b) Prehearing Matters. The parties may request, or the Board through its Executive Secretary may convene, a prehearing conference. The Presiding officer or designee shall not make any decisions on any motion which effectively decides the merits of the appeal and precludes further consideration of the appeal by the Board. Any such potentially dispositive motion shall be considered and decided by the Board at a public meeting. The prehearing conference will be conducted by the Presiding Officer or designee to consider procedural matters including, but not limited to the following:

- (1) Simplification of the issues for appeal;
- (2) Stipulations or admissions as to issues of fact or proof by consent of the parties;
- (3) Limitations on the number of witnesses;
- (4) Extension of the time allotted for the hearing;
- (5) Consolidation of examination of witnesses; or
- (6) Any other matters which aid in the disposition of the proceeding.

(7) The Presiding Officer may consider and rule on any pre-hearing procedural motions, excluding those that could result in the dismissal of the appeal for failure to follow these Rules.

(c) Time Allotment for Hearing.

(1) The time allotted for each party does not include Board questions.

(2) Each party will have a total of 3.5 hours to present their opening statements, question witnesses, cross-examine witnesses, and present their closing statements.

(3) The Board may require both parties to provide an estimate of how their time will be used for various tasks. When reviewing the witness list, the Board may ask who is going to testify and how much time will be needed.

(4) The Board will use its best efforts to set equal time limits for both parties.

(5) If either party does not believe it can adequately present its case within the time allotted, it may submit a motion requesting that the Board extend the time.

a. Any such request must be received by the Board 20 calendar days before the scheduled hearing.

b. The request must state the reason(s) why the allotted time is unreasonable under the circumstances. It must also specify the amount and purpose of the additional time requested.

c. The Board may, at its discretion, recommend or order methods to expedite the hearing process.

The parties shall cooperate in agreeing to a reasonable time for the hearing to allow meaningful due process to the appellant.

502. Appearances, Representation and Conduct Before Board.

(a) Any party to an appeal may appear with or without a representative.

(b) If appearing with a representative, the appellant or the appellant's representative shall file with the executive secretary of the Board an appearance no later than five working days before the date of any hearing using the Form published by the City or a substantially similar document.

(c) The Board shall exclude a representative who refuses to file an appearance or whose behavior impedes the progress of the hearing.

(d) Parties and representatives of parties shall treat the process and all other participants, including members of the Board, witnesses, parties, and representatives, with respect and fairness.

(e) Parties and representatives shall not:

(1) Personally, or through another, knowingly make a false or misleading statement of material fact or law;

(2) Personally, or through another, knowingly conceal, destroy, preclude or delay, access to evidence which is relevant to the proceeding;

(3) Knowingly attempt to introduce evidence which is not relevant to, or admissible in, the proceeding;

(4) Attempt to contact, discuss or influence the Board or its members outside the presence of or without the knowledge of the other party;

(5) Engage in disruptive behavior during the course of a proceeding, including but not limited to:

a. Making frivolous claims or motions;

b. Using tactics that have no purpose other than to embarrass, burden or offend any participant;

c. Speaking or acting in a manner that is abusive to other persons or disruptive to the proceeding; or

d. Attempting to delay the proceedings solely for the sake of delay.

503. Exchange of Information - Generally.

(a) To the extent possible, parties shall make complete and timely responses to the other party's request for documentation/records pertinent to the appeal.

(b) Any dispute with regard to production of records may be brought to the Board for resolution.

504. Exchange of Information – Prehearing Disclosure.

(a) Hearings governed by the Peace Officer's Bill of Rights shall follow the disclosure requirements contained in A.R.S. § 38-1106, as amended. In any appeal of a disciplinary action of a law enforcement officer, the parties shall cooperate, act in good faith and exchange copies of all relevant documents and a list of witnesses as follows:

(1) The City shall disclose within fourteen calendar days of receipt of the law enforcement officer's request for a copy of the investigative file and notice of appeal a copy of the complete investigative file and the names and contact information for all persons interviewed during the course of the investigation.

(2) The Parties shall exchange no later than fourteen calendar days before the appeal hearing and have an ongoing duty to disclose until the end of the appeal process the following:

i. Names of witnesses expected to be called at hearing, with a designation of the subject matter on which each witness might be called to testify. A witness may decline an interview and the parties shall not interfere with any decision of the witness. The City shall not discipline or otherwise retaliate against or threaten to retaliate against any witness for testifying at hearing.

ii. Names and contact information of all persons who have given statements, oral or written, signed or unsigned, regarding matters relevant to the notice of discipline and the custodian of the copies of those statements.

iii. Copies of all documents to be introduced at hearing not previously disclosed.

(b) For all other hearings not governed by the Peace Officer's Bill of Rights, no later than fourteen calendar days before the hearing for a disciplinary action, the parties shall exchange and make available the following information.

(1) The factual basis of the discipline being appealed. If more than one allegation of misconduct formed the basis of the claim, the factual basis for each allegation.

(2) The names and contact information of any witness who the parties intends to call as a witness at the hearing, and a fair description of the substance of the testimony for each witness. If the witness is an expert, the City must disclose the opinion and the basis/grounds of the opinion to which the expert is expected to testify, and the qualifications of the witness.

(3) The existence and general description of any documents or other evidence relevant to the proceedings which the parties have in their possession and any such documents the parties intends to use at the hearing.

(4) The legal theory or theories upon which any claim or defense is being raised on appeal.

(5) The need for an interpreter for any witness the appellant intends to call.

(c) No later than three calendar days before the hearing for a disciplinary action, the parties shall disclose any additional witnesses and documents in response to the initial disclosures which shall be limited to any new issues raised by the appellant for the first time in the submission described by (b).

(d) Information, documents and witnesses not disclosed under this section shall result in such evidence being excluded from consideration at the hearing.

#### 505. Requests for Postponement, Rescheduling or Special Scheduling.

(a) Any party, or the Presiding Officer on his own motion, may request that the Board postpone or reschedule a hearing, or specially schedule the hearing for a different date, time, duration or place, or in a different manner, than indicated in the Board's notice.

(b) A party requesting postponement or rescheduling of a hearing shall attempt to obtain agreement with the opposing party with the rescheduling request. The party must submit any request in writing to the Executive Secretary no later than four (4) calendar days before the hearing.

(c) The Presiding Officer shall grant or deny a request to reschedule the hearing. The Presiding Officer shall not grant an untimely request to postpone or reschedule a hearing unless the Presiding Officer concludes that to do so is necessary to provide due process to the parties.

506. Scheduling of Hearing. The Executive Secretary will notify all interested parties of the date, time and place of the hearing in accordance with these Rules and shall prepare a notice of hearing and agenda for the Board.

### SEC. 600 HEARING PROCEDURES

#### 601. Burden of Proof and Decision of the Board.

(a) The Board acts as the neutral fact finder to ensure that "just cause" existed in the City's disciplinary action. The City must show by a preponderance of the evidence that:

(1) The employee knew or reasonably should have known that the employee's conduct could lead to disciplinary action;

(2) The disciplinary action is the result of job performance, violation of law, violation of established city policy or procedure, and/or a violation of established department policy or procedure;

(3) The investigation produced sufficient evidence or proof to reasonably support the failure of performance or violation as alleged;

(4) If the appellant is a classified sworn law enforcement employee, the disciplinary action is not excessive and is reasonably related to the seriousness of the offense and the officer's service record.

(b) The Board shall decide whether to sustain or overturn the disciplinary action appealed.

(c) Final decisions of the Board shall be by a majority vote of the participating Board members and documented in the record for the meeting.

(d) If the Board determines the City failed to satisfy the elements of just cause, the City Manager has ten (10) business days to review the decision and issue alternative corrective action.

602. Attendance by Parties at Hearings.

(a) Absent a showing of good cause, failure of an appellant to appear for any scheduled hearing on the merits shall result in dismissal of the appeal with prejudice.

(b) Absent a showing of good cause, failure of the City to appear for any scheduled hearing on the merits shall result in a decision on the appeal based on the documents submitted and the evidence admitted as of the time of the hearing.

(c) Good cause shall include circumstances which are beyond the control of the party and prevent that party's appearance as scheduled, such as accident or illness.

SEC. 700 EVIDENCE AND CONDUCT OF HEARING

701. Evidence.

(a) The Arizona Rules of Evidence and Arizona Rules of Civil Procedure shall not apply to hearings hereunder, but may serve as a guide to the Board in determining questions regarding evidence and procedure.

(b) The Board shall give effect to the rules of privilege recognized by the laws of the state of Arizona, such as the lawyer-client privilege, husband-wife privilege, or doctor-patient privilege. However, a party who voluntarily discloses otherwise privileged information, or who has otherwise disclosed that information, shall be deemed to have waived that privilege.

(c) The Board may exclude any evidence that is irrelevant, immaterial, or unduly repetitious.

(d) The Board may permit such direct and cross-examination as the Board concludes is necessary for a full and fair disclosure of the facts. The Board may also ask witnesses questions.

(e) The Board may admit into the record all exhibits jointly filed, or offered without objection, where no disagreement exists between the parties with respect to the admissibility or authenticity of the exhibits being offered.

702. Excluding Witnesses from Hearing. Any witnesses expected to testify at a hearing shall be sequestered from the proceedings until after the witness has testified. However, neither a party to the proceeding nor the executive secretary, shall be sequestered from any part of the proceeding even if expected to testify.

703. Additional Evidence. The Board shall make its determination on the evidence and record presented at the time of the hearing.

704. Opening and Closing Statements.

(a) Each party shall be permitted to make a brief opening statement prior to receiving witness testimony.

(b) If the Board concludes that closing statements would be beneficial to its understanding of the case, the Board shall permit each party to make a brief closing statement at the conclusion of the hearing.

(c) The appellant shall make its closing statement, if any, last.

705. Order of Presentation.

(a) The City shall present its evidence first because it bears the burden of proof. At the conclusion of the City's case in chief, the appellant shall present its evidence.

(b) The City shall be permitted to present rebuttal testimony.

706. Interpreters.

(a) Only persons certified to serve as an interpreter in courts in the State of Arizona are eligible to act as an interpreter at a hearing.

(b) When the need for an interpreter is requested by the appellant for any person the appellant intends to have testify, the City shall provide a court-certified interpreter at the hearing at no cost to the appellant.

707. Retention of Records and Evidence.

(a) Every hearing shall be electronically recorded and shall be made part of the official record.

(b) All party submissions shall be made part of the official record, whether or not admitted into evidence or otherwise accepted by the Board.

(c) The executive secretary of the Board shall retain the official record for each hearing for the period of time provided by the Arizona State Library, Archives and Public Records retention schedule.

## Forms Applicable To Personnel Appeals

1. [Notice of Appeal](#)  
[Notice of Appeal - Police](#)
2. [Notice of Hearing](#)
3. [Notice of Representation](#)
4. [Motion to Extend Time](#)
5. [Prehearing Disclosure](#)  
[Prehearing Disclosure - Police](#)
6. [Request for Prehearing Conference](#)
7. [Request to Postpone/Reschedule](#)
8. [Final Written Decision](#)